

ORIGINAL

NEW APPLICATION



0000187150

RECEIVED
BEFORE THE ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

COMMISSIONERS 2018 MAR 30 A 11: 51

TOM FORESE - Chairman
BOB BURNS
ANDY TOBIN
BOYD DUNN
JUSTIN OLSON

In the matter of:

BAIC, Inc., a Texas for-profit corporation,

SoBell Corp, a Mississippi for-profit corporation,

Andrew Gamber, an Arkansas resident,

Mark Corbett, a California resident,

Upstate Law Group, LLC, a South Carolina limited liability company,

Candy Kern-Fuller, a South Carolina resident,

Smith & Cox, LLC (CRD #149088) an Arizona limited liability company,

William Andrew Smith (CRD #5638821) and Kimberly Ann Smith, husband and wife,

Christopher Spence Cox (CRD #5639015) and Beth Cox, husband and wife,

Respondents.

DOCKET NO. S-21044A-18-0071

**NOTICE OF OPPORTUNITY FOR HEARING
REGARDING PROPOSED ORDER TO CEASE
AND DESIST, ORDER FOR RESTITUTION,
ORDER FOR ADMINISTRATIVE
PENALTIES, ORDER OF REVOCATION AND
ORDER FOR OTHER AFFIRMATIVE
ACTION**

Arizona Corporation Commission

DOCKETED

MAR 30 2018

DOCKETED BY

NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING

EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that respondents BAIC, Inc., SoBell Corp, Andrew Gamber, Mark Corbett, Upstate Law Group, LLC, Candy Kern-Fuller, Smith & Cox, LLC and William Andrew Smith have engaged in acts, practices, and transactions that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act").

1 The Division also alleges that Andrew Gamber is a person controlling BAIC, Inc. and SoBell
2 Corp; Candy Kern-Fuller is a person controlling Upstate Law Group, LLC; and William Andrew Smith
3 and Christopher Spence Cox are persons controlling Smith & Cox, LLC, within the meaning of A.R.S.
4 § 44-1999(B), so that those individuals are jointly and severally liable under A.R.S. § 44-1999(B) to the
5 same extent as the entities they respectively control for those entities' violations of the antifraud
6 provisions of the Securities Act.

7 The Division also alleges that Smith & Cox, LLC and William Andrew Smith have engaged
8 in acts, practices, and transactions that constitute violations of the Arizona Investment Management Act,
9 A.R.S. § 44-3101 *et seq.* ("IM Act").

10 I.

11 JURISDICTION

12 1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona
13 Constitution, the Securities Act and the IM Act.

14 II.

15 RESPONDENTS

16 2. Respondent BAIC, Inc. ("BAIC") is (or was) a Texas for-profit corporation with its
17 principal place of business in Gainesville, Texas. Records of the Texas Secretary of State reflect that on
18 January 27, 2017, BAIC's charter was forfeited. BAIC has not been registered by the Commission as a
19 securities salesman or dealer.

20 3. Respondent SoBell Corp ("SoBell") is (or was) a Mississippi for-profit corporation with
21 its principal place of business in Ridgeland, Mississippi. Records of the Mississippi Secretary of State
22 reflect that SoBell has been dissolved. SoBell has not been registered by the Commission as a securities
23 salesman or dealer.

24 4. Respondent Andrew Gamber ("Gamber") is an Arkansas resident. Gamber is (or was)
25 the President of BAIC and the incorporator of SoBell. Gamber has not been registered by the
26 Commission as a securities salesman or dealer.

1 5. Respondent Mark Corbett ("Corbett") is a resident of Rancho Mission Viejo, California.
2 Corbett has not been registered by the Commission as a securities salesman or dealer.

3 6. Respondent Upstate Law Group, LLC ("ULG") is a South Carolina limited liability
4 company practicing law from its offices in Easley, South Carolina. ULG has not been registered by the
5 Commission as a securities salesman or dealer.

6 7. Respondent Candy Kern-Fuller ("Kern-Fuller") is a resident of South Carolina and an
7 attorney. Kern-Fuller is a founder of and partner in ULG. Kern-Fuller has not been registered by the
8 Commission as a securities salesman or dealer.

9 8. Respondent Smith & Cox, LLC ("Smith & Cox") (CRD #149088) was organized on
10 January 15, 2009, as an Arizona limited liability company. From July 13, 2009, through the present,
11 Smith & Cox has been licensed by the Commission as an investment adviser.

12 9. From July 13, 2009, through the present, Respondent William Andrew Smith ("Smith")
13 (CRD #5638821) has been licensed by the Commission as an investment adviser representative.
14 Since at least January 29, 2009, Smith has been a managing member of Smith & Cox and its chief
15 compliance officer.

16 10. From March 12, 2014, until January 8, 2015, Christopher Spence Cox ("Cox") (CRD
17 #5639015) was licensed by the Commission as an investment adviser representative. Since at least
18 January 29, 2009, Cox has been a managing member for Smith & Cox.

19 11. Respondents BAIC, SoBell, Andrew Gamber, Mark Corbett, ULG, Candy Kern-Fuller,
20 Smith & Cox, William Andrew Smith and Christopher Spence Cox may be referred to collectively as
21 "Respondents".

22 12. Upon information and belief, Kimberly Ann Smith was at all relevant times the spouse
23 of Respondent William Andrew Smith, and Beth Cox was at all relevant times the spouse of Respondent
24 Christopher Spence Cox. Kimberly Ann Smith and Beth Cox may be referred to collectively as
25 "Respondent Spouses". Respondent Spouses are joined in this action under A.R.S. § 44-2031(C) and
26 A.R.S. § 44-3291(C) solely for purposes of determining the liability of the marital communities.

13. At all times relevant, Respondents William Andrew Smith and Christopher Spence Cox were acting for their own benefit and for the benefit or in furtherance of their and their respective Respondent Spouses' marital communities.

III.

OVERVIEW

14. This case involves Respondents' scheme to sell veterans' pensions and disability benefits to investors even though federal law expressly prohibits such sales.

15. Federal law declares that any agreement to purchase payments from a military pension or benefits is prohibited. 38 U.S.C. § 5301(a) (prohibiting assignment of veterans' benefits); 37 U.S.C. § 701 (prohibiting assignment of military retirement pay). The core purpose of these laws is to protect veterans' economic interests and ensure that they always have available to them their federal income stream. *See Porter v. Aetna Cas. & Sur. Co.*, 370 U.S. 159, 162 (1962) (38 U.S.C. § 5301 "should be liberally construed to protect funds granted by the Congress for maintenance and support of the beneficiaries thereof.").

16. Despite these prohibitions, since at least October 28, 2013, Respondents have made, participated in and/or induced the offers and sales of investments whereby veterans agree to sell the income streams from their military retirement or disability benefits payments for a period of months or years to investors in exchange for a discounted lump sum payment.

17. These income stream investments involve the sales of notes and constitute investment contracts and/or evidences of indebtedness. These income stream investments are securities under the Securities Act.

18. In offering the investments, Respondents failed to disclose to investors that federal law expressly prohibits the sale of these income streams. *See* 38 U.S.C. § 5301(a); 37 U.S.C. § 701.

19. Respondents also failed to disclose multiple cease and desist orders and consent orders securities regulators in at least six other states entered against Respondent Andrew Gamber and his previous company for violations of those states' securities laws, including antifraud violations,

arising from the sale of income stream investments involving veterans' pensions and disability benefits.

20. Respondents have also failed to disclose that since June 2013, Respondent William Andrew Smith has been the subject of a federal lien for over \$125,000 in unpaid taxes dating back to 2007 and 2008.

21. From October 28, 2013, through November 17, 2015, Respondents made, participated in and/or induced at least fifty-three (53) sales of income stream investments within or from Arizona totaling over \$2.6 million.

IV.

FACTS

The Operation of the Federal Anti-Assignment Acts

22. Federal law as provided in 38 U.S.C. § 5301(a) prohibits any purported sale or assignment of military benefits for consideration. It states in relevant part:

(1) Payments of benefits due or to become due under any law administered by the Secretary *shall not be assignable* except to the extent specifically authorized by law, and such payments made to, or on account of, a beneficiary shall be exempt from taxation, *shall be exempt from the claim of creditors*, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary.

...

(3)(A) This paragraph is intended to clarify that, in any case where a beneficiary entitled to compensation, pension, or dependency and indemnity compensation enters into an agreement with another person under which agreement such other person acquires for consideration the right to receive such benefit by payment of such compensation, pension, or dependency and indemnity compensation ... *such agreement shall be deemed to be an assignment and is prohibited.*

...

(C) Any agreement or arrangement for collateral for security for an agreement that is prohibited under subparagraph (A) is also *prohibited and is void from its inception.*

1 38 U.S.C. § 5301(a) (emphases added).

2 23. To similar effect, 37 U.S.C. § 701 states that “[a]n enlisted member of the Army,
3 Navy, Air Force, or Marine Corps may not assign his pay, and if he does so, the assignment is void.”

4 24. For purposes of 37 U.S.C. § 701, the term “pay” includes retirement pay. *See* 37
5 U.S.C. § 101(21)

6 25. For purposes of this Notice of Opportunity for Hearing, 37 U.S.C. § 701 and 38 U.S.C.
7 § 5301 are referred to as the Federal Anti-Assignment Acts.

8 **The Structure of Respondents’ Investment Offerings**

9 26. The investments Respondents offered and sold involved a program where a veteran
10 receiving an income stream from a military retirement pension or disability benefits (the seller)
11 appointed BAIC or SoBell as his or her agent to sell part of the future payments from the pension or
12 disability benefits in exchange for a discounted lump sum payment.

13 27. Respondents, except for ULG, then matched an investor (the buyer) to purchase the
14 veteran’s pension or disability benefit payments for a specific term, typically between five and ten
15 years. Respondents represented that the investor would receive a specified rate of return, which
16 ranged between 5% and 8.25% depending on the particular investment.

17 28. To complete a sale when an investor agreed to invest, Respondents used several form
18 documents that were presented to the investor in a “Closing Book.” The Closing Book form
19 documents were substantially identical regardless of whether BAIC or SoBell was offering the
20 investment.

21 29. None of the documents in the Closing Books that Respondents provided to investors
22 disclosed that the Federal Anti-Assignment Acts prohibit the sale or assignment of the veterans’
23 pension and disability payments.

24 30. Each Closing Book included a “Sales Assistance Agreement,” which the veteran
25 executed to appoint BAIC or SoBell as his or her agent to sell future payments from the veteran’s
26

1 pension or disability benefits “to one or more third party potential buyer(s), the identities of which
2 are to be provided to [BAIC or SoBell] by independent parties [or contractor(s)].”

3 31. Of the fifty-three income stream investments at issue, the Sales Assistance Agreement
4 in forty-eight (48) of them listed Mark Corbett as the “Vendor.”

5 32. The Sales Assistance Agreements provided for the veteran to pay BAIC or SoBell a
6 commission at the closing of the sale. Corbett, ULG and Smith & Cox also received fees or
7 commissions when those sales closed.

8 33. Each Closing Book also included a “Purchase Assistance Agreement,” which the
9 investor executed to engage BAIC or SoBell and Smith & Cox, LLC to assist in purchasing future
10 payments from the veteran’s pension or disability benefits. The Purchase Assistance Agreement
11 defined the “Transaction Assistance Team” to include BAIC or SoBell and Smith & Cox, LLC, and
12 provided for those entities to receive commissions at closing.

13 34. The Purchase Assistance Agreements directed the investor to send his or her
14 investment monies payable to ULG’s IOLTA account, and ULG was defined as the “Escrow Agent.”

15 35. Marketing materials that Smith & Cox presented to at least one investor represented
16 ULG as “Buyer’s Legal Representation.” The materials stated:

- 17 • Upstate Law Group, LLC of South Carolina is contracted by [the
18 distributor] to provide legal, escrow and payment services for the exclusive
19 benefit of the Buyer and [the distributor].
- 20 • ULG provides a credit report and LexisNexis search report on each
21 individual Seller and provides a transaction summary to the Buyer and [the
22 distributor] for review prior to closing.
- 23 • ULG ensures all documentation is complete and the purchased payments
24 are directed to ULG’s Trust Account prior to closing.
- 25 • ULG prepares and files a UCC-1 to “Perfect” the Buyer’s security interest
26 in the Seller’s income.
- All Structured Income Asset monthly payments are processed in Upstate
Law Group’s Trust Accounts.

1 36. Each Closing Book also included a “Contract for Sale of Payments,” which the
2 veteran and the investor executed in counterparts.

3 37. The Contract for Sale of Payments recited: “Seller desires to sell certain fixed
4 payments arising from a certain structured asset once they have been distributed to and received into
5 an account of the Seller (‘the Payments’).” The “Source of the Payments” was identified as either
6 the veteran’s military pension or disability benefits.

7 38. The Contract for Sale of Payments provided: “Seller shall transfer and sell to Buyer
8 at Closing one hundred percent (100%) of Seller’s right, title and interest in and to the Payments;
9 provided however, that the Payment Source and underlying asset shall remain the sole property of
10 Seller and shall remain under the control of Seller.”

11 39. The provision for the veteran to “transfer and sell ... one hundred percent (100%) of
12 [his or her] right, title and interest in and to the Payments” contravened the Federal Anti-Assignment
13 Acts. *See* 38 U.S.C. § 5301(a) (“Payments of benefits due or to become due ... shall not be
14 assignable....”); 37 U.S.C. § 701 (“An enlisted member of the Army, Navy, Air Force, or Marine
15 Corps may not assign his pay, and if he does so, the assignment is void.”). Pursuant to those statutes,
16 the veteran, and not the investor, retained all rights and claims to the pension or benefits payments.

17 40. The Contract for Sale of Payments required the veteran to change the account where
18 he or she received the monthly pension or disability payments to a “designated escrow account at
19 Upstate Law Group, LLC.” The Closing Book included a “Change of Payment Address Verification”
20 executed by the veteran showing that he or she had instructed the Defense Finance and Accounting
21 Services (“DFAS”), which pays monthly military pension payments, or the Veterans’
22 Administration, which pays monthly disability benefits, to directly deposit future payments to a
23 SunTrust Bank account ending in Xx6119, which ULG controlled.

24 41. As the escrow agent, after ULG received a veteran’s monthly pension or disability
25 payment, ULG disbursed the payment to the investor who had purchased that veteran’s monthly
26 payment.

1 42. The Section 10.2 of the Contract for Sale of Payments stated:

2 10.2. BOTH PARTIES INTEND THAT THE TRANSACTION(S)
3 CONTEMPLATED BY THIS CONTRACT SHALL CONSTITUTE
4 VALID SALE(S) OF PAYMENTS AND SHALL NOT CONSTITUTE
5 IMPERMISSIBLE ASSIGNMENT(S), TRANSFER(S), OR
6 ALIENATION OF BENEFITS BY SELLERS AS CONTEMPLATED BY
7 APPLICABLE LAWS; HOWEVER, CERTAIN RISKS PERSIST.

8 43. Section 10.2's representation of the transaction as "valid" and not an "impermissible
9 assignment" was misleading in light of Respondents' failure to disclose that the Federal Anti-
10 Assignment Acts prohibit the sale or assignment of the pension and disability payments at issue.

11 44. Each Closing Book also included a "Disclosure of Risks Statement," which the
12 investor had to sign. The Disclosure of Risks Statement stated in relevant part:

13 Restrictions On Assignability/Collectability. Pension stream investments
14 fall under regulatory restriction (sic) that restricts the assignment of the
15 scheduled payments due thereunder.... Consequently, this transaction is a
16 purchase of a contractual right to a payment obligation and not the payment
17 per se. Although certain courts have held transactions of this nature to be
18 enforceable even in the presence of an anti-assignment clause, there is no
19 assurance that a future court would permit enforcement of payment rights
20 under this arrangement.

21 45. The representation that regulations "restrict[]" the assignment of pension and
22 disability payments was misleading in light of Respondents' failure to disclose that the Federal Anti-
23 Assignment Acts do not just "restrict" but prohibit their assignment. See 38 U.S.C. § 5301(a)
24 ("Payments of benefits due or to become due ... shall not be assignable...."); 37 U.S.C. § 701
25 (prohibiting assignment of military retirement pay).

26 46. The representation that, "certain courts have held transactions of this nature to be
enforceable" but a future court might not, was misleading in light of Respondents' failure to disclose
that several courts applying the Federal Anti-Assignment Acts have held transactions of this nature
to be unenforceable. See *Dorfman v. Moorhous*, 108 F.3d 51, 55-56 (4th Cir. 1997) (officer's

1 attempted assignment of retirement pay was invalid pursuant to 37 U.S.C. § 701); *In re Dunlap*, 458
 2 B.R. 301, 325 (Bankr. E.D. Va. 2011) (same); *In re Webb*, 376 B.R. 765, 767-68 (Bankr. W.D. Okla.
 3 2007) (same); *In re Price*, 313 B.R. 805, 809 (Bankr. E.D. Ark. 2004) (“[A] sale of [the service
 4 member’s] future pension rights is specifically prohibited by federal law.”).

5 47. The Disclosure of Risks Statement also stated in relevant part:

6 *Non-receipt of Scheduled Payment/Collections.* Non-receipt of payment
 7 could occur for a number of reasons ranging from administrative delays ...
 8 [to] a diversion. A diversion occurs when a seller redirects any scheduled
 9 payment previously sold to Buyer to any entity other than the Buyer in
 10 violation of the Seller’s contractual agreements with the Buyer. The
 11 Transaction Assistance Team considers a diversion to be a default by the
 Seller.... Buyer’s ability to enforce judgments, realize success in the
 garnishment process and prevail in the redirecting of the payments cannot
 be guaranteed.

12 48. The purported disclosure about the risk that a veteran might re-direct the pension or
 13 disability benefits back to himself was misleading in light of Respondents’ failure to disclose that the
 14 Federal Anti-Assignment Acts prohibit the sale or assignment of the pension and disability payments
 15 in the first place.

16 49. The purported disclosure about the potential for the investor to obtain and collect a
 17 judgment against the veteran who re-directed his benefits payments to himself was misleading in
 18 light of Respondents’ failure to disclose that disability benefit payments are “exempt from the claim
 19 of creditors.” 38 U.S.C. § 5301(a).

20 50. Collectively, the Closing Book documents represented the investment to be a binding
 21 and legally enforceable contractual obligation for the veteran to pay and the investor to receive future
 22 payments from the veteran’s pension or disability benefits in exchange for the upfront lump sum
 23 payment to the veteran.

24

25

26

Respondents' Failure to Disclose Prior Orders Against Gamber and His Companies

51. Respondent Andrew Gamber, who is (or was) the President of BAIC and the incorporator of SoBell, has been the subject of multiple orders by state regulators for his or his companies' violations of insurance and securities laws and regulations.

52. On April 4, 2008, the Arkansas Insurance Commissioner entered a Consent Order against Gamber, under which his insurance producer's license was suspended for two years and he was ordered to pay an administrative penalty. The Consent Order arose from four consumer complaints against Gamber in 2006 alleging he: (i) made false or fraudulent statements; (ii) forged a document; (iii) used fraudulent, coercive or dishonest practices or demonstrated incompetence, untrustworthiness, lack of good personal or business reputation or financial irresponsibility; and (iv) churned business by replacing an existing insurance policy with one that was not for the benefit of the insured.

53. On July 1, 2009, the Arkansas Insurance Commissioner entered another Consent Order against Gamber, under which he surrendered his Arkansas insurance producer's license, agreed he could not reapply for licensure for three years, and agreed to pay a \$25,000 administrative penalty. This Consent Order arose from two consumer complaints against Gamber in 2009 alleging he: (i) made false or fraudulent statements; (ii) used fraudulent, coercive or dishonest practices or demonstrated incompetence, untrustworthiness, lack of good personal or business reputation or financial irresponsibility; and (iii) churned business by replacing an existing insurance policy with one that was not for the benefit of the insured.

54. From at least October 28, 2013, through November 17, 2015, Respondents offered and sold BAIC and SoBell income stream investments within or from Arizona.

55. During that timeframe, Gamber and his previous company, non-party VFG, LLC, which was also known as Voyager Financial Group, LLC ("VFG"), were the subjects of the following cease and desist orders and consent orders entered by securities regulators in six states for securities

1 violations arising from the sale of income stream investments involving veterans' pensions and
2 disability benefits:

3 a) On April 22, 2013, the Arkansas Securities Commissioner entered a Cease and
4 Desist Order against Gamber and VFG for selling unregistered securities involving military
5 retirement income streams. The Cease and Desist Order found that since February 28, 2012, Gamber
6 had been the managing member of VFG and owned between 32% and 100% of the company.

7 b) On September 20, 2013, the Iowa Insurance
8 Commissioner entered a Consent Order under which Gamber and VFG were ordered to cease and
9 desist from violating Iowa's securities laws with respect to the sale of income stream contracts.

10 c) On December 10, 2013, the Securities Division of the New Mexico Regulation
11 and Licensing Department entered a Cease and Desist Order against VFG. The Cease and Desist
12 Order found that VFG, through its sales agents, deceived investors by describing the sale of income
13 streams from veterans' pensions and disability benefits as valid and permissible transactions, and by
14 omitting the material fact that the assignment of these income streams is prohibited under 37 U.S.C.
15 § 701 and 38 U.S.C. § 5301.

16 d) On March 18, 2014, the Arkansas Securities Commissioner entered a Second
17 Cease and Desist Order against VFG. The Second Cease and Desist Order found that VFG had
18 violated the registration and antifraud provisions of the Arkansas Securities Act by among other
19 things:

- 20 (i) Representing in the Contract for Sale of Payments that "Seller shall transfer
21 and sell to Buyer at Closing one hundred percent (100%) of Seller's right, title
22 and interest in and to the Payments." The Second Cease and Desist Order
23 found, "This is clearly a misstatement in view of federal laws prohibiting the
24 assignment or transfer of federal pensions." Second Cease and Desist Order
25 at ¶ 8.
26

1 (ii) Representing in Section 10.2 of the Contract for Sale of Payments that the
2 transaction was “valid” and not an “impermissible assignment,” when the
3 Federal Anti-Assignment Acts prohibited the sale or assignment of the pension
4 and benefits payments at issue. Second Cease and Desist Order at ¶ 9.

5 (iii) Misstating “federal laws and court cases that clearly prohibit the assignment
6 or transfer of federal pension payments sold by VFG....” Second Cease and
7 Desist Order at ¶ 9.

8 e) On May 12, 2014, Pennsylvania’s Department of Banking and Securities
9 entered a Consent Order against VFG, which Gamber signed on VFG’s behalf. The Consent Order
10 found that VFG willfully violated the antifraud provision of Pennsylvania’s Securities Act of 1972
11 by failing to disclose: (i) the identity and relevant background of its corporate officers, and (ii) that
12 the assignment of military pensions is prohibited by federal law.

13 f) On June 23, 2014, the Arkansas Securities Commissioner entered a Consent
14 Order against VFG and Gamber, which Gamber signed. The Consent found that VFG and Gamber
15 had violated the registration provisions of the Arkansas Securities Act, and that VFG had also
16 violated that Act’s antifraud provision with respect to the sale of income stream investments.

17 g) On August 26, 2014, Florida’s Office of Financial Regulation entered a Final
18 Order against VFG for selling military retirement income streams as unregistered securities.

19 h) On November 7, 2014, California’s Department of Business Oversight entered
20 a Desist and Refrain Order against VFG for selling military retirement income streams as
21 unregistered securities and in violation of the antifraud provision in Section 25401 of the California
22 Corporate Securities Law of 1968.

23

24

25

26

1 56. Respondents failed to disclose to investors any of the foregoing consent orders and
2 cease and desist orders against Gamber and/or his previous company, VFG, for insurance and
3 securities law violations.

4 **Respondents' Failure to Disclose an Unpaid \$125,079 Federal Tax Lien Against Smith**

5 57. On January 29, 2009, Smith, on behalf of Smith & Cox, filed with the Division a Form
6 ADV uniform application for Smith & Cox to become an Arizona-licensed investment adviser, and a
7 Form U4 uniform application for Smith to become an Arizona-licensed investment adviser
8 representative.

9 58. Form ADV asks for information about the firm and its advisory affiliates, who include
10 the firm's officers, partners or directors, and all persons who directly or indirectly control the firm.

11 59. As the managing member of Smith & Cox and its chief compliance officer, Smith has at
12 all times been an advisory affiliate of Smith & Cox.

13 60. Form ADV states: "We use this information to determine whether to grant your
14 application for registration, to decide whether to revoke your registration or to place limitations on your
15 activities as an investment adviser...."

16 61. Form U4 is filed with the Division by an applicant seeking to become licensed as an
17 investment adviser representative. The Division reviews Form U4 in deciding whether to grant an
18 applicant's license and whether to seek to suspend or revoke an investment adviser representative's
19 license.

20 62. The Form U4 Smith and Smith & Cox filed on January 29, 2009, asked: "Do you have
21 any unsatisfied ... liens against you?" Smith and Smith & Cox answered "No."

22 63. The Form U4 filed on January 29, 2009, required Smith and Smith & Cox to "agree to
23 update this form by causing an amendment to be filed on a timely basis whenever changes occur to
24 answers previously reported." Similarly, the Form ADV Smith and Smith & Cox filed that date directed:
25 "You must keep this form updated by filing periodic amendments."
26

1 64. On July 13, 2009, the Division approved Smith & Cox's and Smith's applications, and
2 they became licensed as an investment adviser and an investment adviser representative, respectively.

3 65. On July 25, 2011, Smith, on behalf of Smith & Cox, filed an amendment to his Form
4 U4. The amendment asked: "Do you have any unsatisfied ... liens against you?" Smith and Smith &
5 Cox answered "No."

6 66. On June 25, 2013, the Internal Review Service ("I.R.S.") recorded a Notice of Federal
7 Tax Lien in Pima County, Arizona against Smith for \$125,079 in unpaid income taxes from 2007
8 and 2008.

9 67. No release or satisfaction of the I.R.S.'s \$125,079 lien against Smith has been
10 recorded in Pima County, Arizona.

11 68. The I.R.S.'s unsatisfied lien against Smith was a material change to the facts stated in
12 the Form U4 Smith and Smith & Cox filed on January 29, 2009, and the amended Form U4 they filed
13 on July 25, 2011.

14 69. Pursuant to A.R.S. § 44-3159(A)(1), Smith and Smith & Cox had a duty to file with
15 the Commission a supplemental statement disclosing the unsatisfied lien against Smith for \$125,079
16 in unpaid income taxes.

17 70. Smith and Smith & Cox never amended the Form U4 to disclose the lien against Smith
18 for \$125,079 in unpaid income taxes.

19 71. On September 13, 2013, February 20, 2014, February 2, 2016, and April 7, 2016,
20 Smith, on behalf of Smith & Cox, filed with the Division amendments to Smith & Cox's Form ADV.

21 72. Each of those amendments asked: "Are there any unsatisfied judgments or liens
22 against you, any advisory affiliate, or any management person?" Each time, Smith and Smith & Cox
23 answered, "No."

24 73. Smith's and Smith & Cox's answers to those questions regarding unsatisfied liens
25 against Smith were false, inaccurate and misleading. As set forth above, in 2013 the I.R.S. recorded a
26

1 lien against Smith for \$125,079 in unpaid income taxes from 2007 and 2008, and there is no record
2 that Smith has satisfied that lien.

3 74. When they offered and sold BAIC and SoBell income stream investments within or
4 from Arizona, Respondents failed to disclose to investors that since June 25, 2013, Smith has been
5 the subject of an I.R.S. lien for \$125,079 in unpaid taxes from 2007 and 2008.

6 75. On August 2, 2016, the I.R.S. recorded a Notice of Federal Tax Lien in Pima County,
7 Arizona against Smith for \$9,594 in unpaid income taxes from 2014.

8 76. No release or satisfaction of the I.R.S.'s \$9,594 lien against Smith has been recorded
9 in Pima County, Arizona.

10 77. On August 29, 2017, the I.R.S. recorded a Notice of Federal Tax Lien in Pima County,
11 Arizona against Smith for \$43,602 in unpaid income taxes from 2009.

12 78. No release or satisfaction of the I.R.S.'s \$43,602 lien against Smith has been recorded
13 in Pima County, Arizona.

14 79. Pursuant to A.R.S. § 44-3159(A)(1), Smith and Smith & Cox had a duty to file with
15 the Commission a supplemental statement disclosing the unsatisfied liens against Smith for \$9,594
16 and \$43,602 in unpaid income taxes.

17 80. Smith and Smith & Cox have never amended Smith's Form U4 or Smith & Cox's
18 Form ADV to disclose the liens against Smith for \$9,594 and \$43,602 in unpaid income taxes.

19 **V.**

20 **VIOLATION OF A.R.S. § 44-1841**

21 **(Offer or Sale of Unregistered Securities)**

22 81. From on or about October 28, 2013, Respondents offered or sold securities in the form
23 of notes, investment contracts and/or evidences of indebtedness within or from Arizona.

24 82. The securities referred to above were not registered pursuant to Articles 6 or 7 of the
25 Securities Act.

26 83. This conduct violates A.R.S. § 44-1841.

VI.

VIOLATION OF A.R.S. § 44-1842

(Transactions by Unregistered Dealers or Salesmen)

84. Respondents offered or sold securities within or from Arizona while not registered as dealers or salesmen pursuant to Article 9 of the Securities Act.

85. This conduct violates A.R.S. § 44-1842.

VII.

VIOLATION OF A.R.S. § 44-1991

(Fraud in Connection with the Offer or Sale of Securities)

86. In connection with the offer or sale of securities within or from Arizona, Respondents directly or indirectly: (i) employed a device, scheme, or artifice to defraud; (ii) made untrue statements of material fact or omitted to state material facts that were necessary in order to make the statements made not misleading in light of the circumstances under which they were made; and/or (iii) engaged in transactions, practices, or courses of business that operated or would operate as a fraud or deceit upon offerees and investors. Respondents' conduct includes, but is not limited to, the following:

a) failing to disclose to investors that the Federal Anti-Assignment Acts prohibit the sale or assignment of veterans' pension and disability payments;

b) misrepresenting in the Contract for Sale of Payments that the transaction was "valid" and not an "impermissible assignment" while failing to disclose the impact of the Federal Anti-Assignment Acts;

c) misleading investors that regulations "restrict[]" the assignment of pension and disability payments when the Federal Anti-Assignment Acts do not just "restrict" but prohibit their assignment;

d) representing that "certain courts have held transactions of this nature to be enforceable" but a future court might not, while failing to disclose that several courts applying the Federal Anti-Assignment Acts have held transactions of this nature to be unenforceable;

1 e) misleading investors about the risk that a veteran might re-direct the pension or
2 disability benefits back to himself by failing to disclose that the Federal Anti-Assignment Acts prohibit
3 the sale or assignment of the pension and disability payments in the first place;

4 f) misleading investors about the potential for an investor to obtain and collect a
5 judgment against a veteran who re-directed his benefits payments to himself by failing to disclose
6 that such payments are "exempt from the claim of creditors." 38 U.S.C. § 5301(a).

7 g) deceiving investors with the illusion of legality by representing ULG as "Buyer's
8 Legal Representation" and using ULG's IOLTA account to deposit the investor's investment funds and
9 to distribute the veteran's monthly payments;

10 h) failing to disclose to investors the numerous consent orders and cease and desist
11 orders against Gamber and/or his previous company, VFG, for insurance and securities law violations;
12 and

13 i) failing to disclose to investors that since June 25, 2013, Smith has been the
14 subject of an I.R.S. lien for \$125,079 in unpaid taxes dating back to 2007 and 2008.

15 87. This conduct violates A.R.S. § 44-1991.

16 VIII.

17 CONTROL PERSON LIABILITY PURSUANT TO A.R.S. § 44-1999

18 88. From at least October 28, 2013 through at least November 17, 2015, Gamber has been
19 and/or held himself out as the President of BAIC and the incorporator and a principal of SoBell.

20 89. From at least October 28, 2013 through at least November 17, 2015, Gamber directly
21 or indirectly controlled BAIC and SoBell within the meaning of A.R.S. § 44-1999. Therefore,
22 Gamber is jointly and severally liable to the same extent as BAIC and SoBell for their violations of
23 A.R.S. § 44-1991 from at least October 28, 2013 through at least November 17, 2015.

24 90. From at least October 28, 2013 through at least November 17, 2015, Kern-Fuller has
25 been and/or held herself out as a partner in ULG.
26

91. From at least October 28, 2013 through at least November 17, 2015, Kern-Fuller directly or indirectly controlled ULG within the meaning of A.R.S. § 44-1999. Therefore, Kern-Fuller is jointly and severally liable to the same extent as ULG for its violations of A.R.S. § 44-1991 from at least October 28, 2013 through at least November 17, 2015.

92. From at least October 28, 2013 through at least November 17, 2015, Smith and Cox have been and/or held themselves out as managing members of Smith & Cox.

93. From at least October 28, 2013 through at least November 17, 2015, Smith and Cox directly or indirectly controlled Smith & Cox within the meaning of A.R.S. § 44-1999. Therefore, Smith and Cox are jointly and severally liable to the same extent as Smith & Cox for its violations of A.R.S. § 44-1991 from at least October 28, 2013 through at least November 17, 2015.

IX.

REMEDIES PURSUANT TO A.R.S. § 44-3201

(Revocation of Investment Adviser and or Investment Adviser Representative Licenses)

94. Respondents Smith & Cox's and Smith's conduct is grounds to revoke these Respondents' licenses as an investment adviser and investment adviser representative, respectively, with the Commission pursuant to A.R.S. § 44-3201. Specifically, revocation of these Respondents' licenses would be in the public interest, and these Respondents have filed supplements or amendments to their licensure applications that are incomplete, inaccurate and/or misleading, within the meaning of A.R.S. § 44-3201(A)(1).

X.

VIOLATION OF A.R.S. § 44-3241

(Fraud in the Provision of Investment Advisory Services)

95. Respondents Smith & Cox and Smith engaged in a transaction or transactions within or from Arizona involving the provision of investment advisory services in which these Respondents, directly or indirectly: (i) employed a device, scheme, or artifice to defraud; (ii) made untrue statements of material fact or omitted to state material facts that were necessary in order to make the statements

1 made not misleading in light of the circumstances under which they were made; (iii) misrepresented
2 professional qualifications with the intent that the client rely on the misrepresentation; or (iv) engaged
3 in transactions, practices, or courses of business that operated or would operate as a fraud or deceit.
4 Smith & Cox's and Smith's conduct includes, but is not limited to, the following:

5 a) failing to disclose to investors that the Federal Anti-Assignment Acts prohibit
6 the sale or assignment of veterans' pension and disability payments;

7 b) misrepresenting in the Contract for Sale of Payments that the transaction was
8 "valid" and not an "impermissible assignment" while failing to disclose the impact of the Federal Anti-
9 Assignment Acts;

10 c) misleading investors that regulations "restrict[]" the assignment of pension and
11 disability payments when the Federal Anti-Assignment Acts do not just "restrict" but prohibit their
12 assignment;

13 d) representing that "certain courts have held transactions of this nature to be
14 enforceable" but a future court might not, while failing to disclose that several courts applying the
15 Federal Anti-Assignment Acts have held transactions of this nature to be unenforceable;

16 e) misleading investors about the risk that a veteran might re-direct the pension or
17 disability benefits back to himself by failing to disclose that the Federal Anti-Assignment Acts prohibit
18 the sale or assignment of the pension and disability payments in the first place;

19 f) misleading investors about the potential for an investor to obtain and collect a
20 judgment against a veteran who re-directed his benefits payments to himself by failing to disclose
21 that such payments are "exempt from the claim of creditors." 38 U.S.C. § 5301(a).

22 g) deceiving investors with the illusion of legality by representing ULG as "Buyer's
23 Legal Representation" and using ULG's IOLTA account to deposit the investor's investment funds and
24 to distribute the veteran's monthly payments;

h) failing to disclose to investors the numerous consent orders and cease and desist orders against Gamber and/or his previous company, VFG, for insurance and securities law violations; and

i) failing to disclose to investors that since June 25, 2013, Smith has been the subject of an I.R.S. lien for \$125,079 in unpaid taxes dating back to 2007 and 2008.

96. This conduct violates A.R.S. § 44-3241.

XIII.

REQUESTED RELIEF

The Division requests that the Commission grant the following relief:

1. Order all Respondents to permanently cease and desist from violating the Securities Act, pursuant to A.R.S. §§ 44-2032;

2. Order Respondents Smith and Smith & Cox to permanently cease and desist from violating the IM Act, pursuant to A.R.S. §§ 44-3201 and 44-3292;

3. Order all Respondents to take affirmative action to correct the conditions resulting from Respondents' acts, practices, or transactions, including a requirement to make restitution pursuant to A.R.S. § 44-2032;

4. Order Respondents Smith and Smith & Cox to take affirmative action to correct the conditions resulting from these Respondents' acts, practices, or transactions, including a requirement to make restitution pursuant to A.R.S. § 44-3292.

5. Order all Respondents to pay the state of Arizona administrative penalties of up to five thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;

6. Order Respondents Smith and Smith & Cox to pay the state of Arizona administrative penalties of up to one thousand dollars (\$1,000) for each violation of the IM Act, pursuant to A.R.S. § 44-3296;

7. Order the revocation of Respondents Smith & Cox's and Smith's licenses as an investment adviser and investment adviser representatives, respectively, pursuant to A.R.S. § 44-3201;

5 || XIV.

6 HEARING OPPORTUNITY

15 If a request for a hearing is timely made, the Commission shall schedule the hearing to begin 20
16 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the parties, or
17 ordered by the Commission. If a request for a hearing is not timely made the Commission may, without
18 a hearing, enter an order granting the relief requested by the Division in this Notice of Opportunity for
19 Hearing.

26

XV.**ANSWER REQUIREMENT**

Pursuant to A.A.C. R14-4-305, if a Respondent or a Respondent Spouse requests a hearing, the requesting respondent must deliver or mail an Answer to this Notice of Opportunity for Hearing to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007, within 30 calendar days after the date of service of this Notice. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at <http://www.azcc.gov/divisions/hearings/docket.asp>.

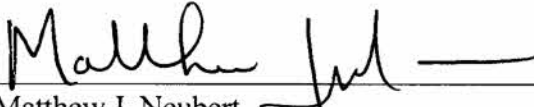
Additionally, the answering respondent must serve the Answer upon the Division. Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix, Arizona, 85007, addressed to James D. Burgess.

The Answer shall contain an admission or denial of each allegation in this Notice and the original signature of the answering respondent or respondent's attorney. A statement of a lack of sufficient knowledge or information shall be considered a denial of an allegation. An allegation not denied shall be considered admitted.

When the answering respondent intends in good faith to deny only a part or a qualification of an allegation, the respondent shall specify that part or qualification of the allegation and shall admit the remainder. Respondent waives any affirmative defense not raised in the Answer.

The officer presiding over the hearing may grant relief from the requirement to file an Answer for good cause shown.

Dated this 30th day of March, 2018.


Matthew J. Neubert
Director of Securities